

25267

PATENT TRADEMARK OFFICE

PATENT APPLICATION

Applicant: Mobley et al.

Serial No.: 09/669,707

Filing Date: September 26, 2000

Title: LOAD CELL APPARATUS

Group: 2841

Examiner: Gibson, R.

Attorney Docket No.: 8266-0474

COMMISSIONER FOR PATENTS
WASHINGTON, D.C. 20231

Dear Sir:

Transmitted herewith is a response in the above-identified application:

The fee has been calculated as shown below:

CLAIMS AS AMENDED					
	CLAIMS REMAINING AFTER AMENDMENT	HIGHEST NO. PREVIOUSLY PAID FOR	NUMBER EXTRA	RATE	FEE
TOTAL CLAIMS (37 C.F.R. 1.16(c))	11	20	0	\$18	\$0
INDEPENDENT CLAIMS (37 C.F.R. 1.16(b))	1	3	0	\$84	\$0
If applicant has small entity status under 37 C.F.R. 1.9 and 1.27, then divide total fee by 2, and enter amount here.			SMALL ENTITY TOTAL	NO	\$0
TOTAL FEE FOR ADDITIONAL CLAIMS					\$0

*If the "Highest Number Previously Paid For" in this space is less than 20, write "20" in this space.

**If the "Highest Number Previously Paid For" in this space is less than 3, write "3" in this space.

<input checked="" type="checkbox"/>	An Extension of Time for three month(s) is hereby requested under 37 C.F.R. 1.136(a). The required fee for filing this extension is:	\$920.00
<input type="checkbox"/>	Information Disclosure Statement	
<input checked="" type="checkbox"/>	A Suspension of Action Under § 1.103(a) is hereby requested. The required fee for filing this request is:	\$130.00
	TOTAL FEE FOR THIS AMENDMENT	\$1,050.00

 A check in the amount of \$1,050.00 to cover the total fee for this
amendment is attached.

The Commissioner is hereby authorized to charge any additional filing fees under 37 C.F.R. 1.16 or processing fees under 37 C.F.R. 1.17 which may be required during the prosecution of this application, or credit of any overpayment, to Bose McKinney & Evans LLP's Deposit Account No. 02-3223. A duplicate copy of this sheet is enclosed.

Norman J. Hedges
Attorney of Record
Printed Name: Norman J. Hedges
Registration No.: 44,151



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135 North Pennsylvania Street
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PATENT APPLICATION

25267
PATENT TRADEMARK OFFICE

#13
10-23-2
Roberts

THE UNITED STATES PATENT AND TRADEMARK OFFICE

Group: 2841 }
Atty. Docket: 8266-0474 }
Applicant: Mobley et al. }
Invention: LOAD CELL APPARATUS }
Serial No.: 09/669,707 }
Filed: September 26, 2000 }
Examiner: Gibson R. }

Certificate Under 37 CFR 1.8(a)

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to Box Issue Fee, Assistant Commissioner for Patents, Washington, D.C. 20231

on October 7, 2002

Norman J. Hedges

Dated October 7, 2002LETTER TO OFFICIAL DRAFTSMAN

Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

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Applicant submits herewith new formal drawings, Figs. 1-16 for the above-identified application meeting the requirements of 37 CFR Section 1.84.

If the Draftsman has any questions regarding the drawings, please contact applicant's undersigned attorney, at (317) 684-5283.

Respectfully submitted,

BOSE McKINNEY & EVANS LLP

Norman J. Hedges
Reg. No. 44,151

Indianapolis, Indiana
(317) 684-5283



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

U.S. DISTRICT COURT
INDIANAPOLIS DIVISION
TECHNICAL SECTION
02 AUG 27 AM 98-10
SOUTHERN DISTRICT OF INDIANA
LAURA A. BRIGGS
CLERK

HILL-ROM COMPANY, INC., HILL-
ROM, INC., and HILL-ROM SERVICES,
INC.

Plaintiff,

JURY TRIAL DEMANDED

vs.

STRESS-TEK, INC.,

Defendant.

1:02-CV-1327-RLY

COMPLAINT

The Plaintiffs, Hill-Rom Company, Inc., Hill-Rom, Inc., and Hill-Rom Services, Inc. ("Hill-Rom"), for their Complaint against the Defendant, Stress-Tek, Inc. ("Stress-Tek"), hereby allege and state:

PARTIES, JURISDICTION, AND VENUE

1. Hill-Rom Company, Inc. is an Indiana corporation with its principal place of business in Batesville, Indiana.
2. Hill-Rom, Inc. is an Indiana corporation with its principal place of business in Batesville, Indiana.
3. Hill-Rom Services, Inc. is a Delaware corporation with its principal place of business in Batesville, Indiana.
4. On information and belief, Stress-Tek is a Washington corporation with its principal place of business in Kent, Washington.



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5. This claim arises under the patent laws, 35 U.S.C. § 116, § 256. This Court has jurisdiction over Hill-Rom's claims pursuant to 28 U.S.C. §§ 1331 and 1338.

6. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391.

BACKGROUND

7. Hill-Rom is a manufacturer of medical devices including, among other products, hospital beds. Specifically, Hill-Rom designs, develops, and manufactures weighing beds, which allow a patient to be weighed as many times as is needed without regard to the patient's mobility.

8. Weighing beds typically use devices called "load cells," which are transducers that convert force or weight into an electrical signal. The strength of the signal received by one or more load cells can be measured and used to display the weight of a patient in the bed. The industry has long sought a solution to a load cell assembly for a weighing bed that can be used repeatedly without diminished accuracy.

9. In designing a new weighing bed, Hill-Rom sought to address problems with existing load cells by redesigning the load cell assemblies.

10. On or about March 1999, Hill-Rom had developed a prototype weigh bed with a dual frame load cell assembly. The load cell assembly consisted of a load-cell body stationary relative to one frame and a receiver stationary relative to the second frame. The load cell body consisted of a ball stud that inserted into the receiver body, which contained a liner. The liner was substantially non-movable relative to the receiver body and had an inner surface engaged by the ball stud.

11. The inventors of this dual frame load cell assembly were Hill-Rom employees. The inventions were made in the course of their employment obligations to Hill-Rom and are the property of Hill-Rom.

12. In April 1999, Hill-Rom sought to improve the load isolation on its weighing beds, and brought in at least three suppliers to examine its dual frame load assembly. These suppliers had all entered into confidentiality agreements with Hill-Rom, in which they agreed to protect technical information disclosed by Hill-Rom and developed for Hill-Rom.

13. Stress-Tek was one of those suppliers, which had entered into a Bilateral Confidential Information Agreement ("the Agreement") with Hill-Rom on March 3, 1998 (attached as Exhibit A). Its representative traveled to Batesville, Indiana in April 1999 to view Hill-Rom's existing dual frame load assembly and to observe and evaluate Hill-Rom's testing of the assembly.

14. Hill-Rom requested suggestions from the suppliers, including the proper material to be used in the liner of the assembly.

15. All of the suppliers, including Stress-Tek, suggested the use of a cylindrical-shaped stud. Stress-Tek and another supplier suggested urethane for the liner.

16. A cylindrical-shaped stud in a socket lined with a urethane insert is used on the Hill-Rom Advanta™ beds, which otherwise embody the novel assembly invented by Hill-Rom.

17. In August 1999, Stress-Tek told Hill-Rom of its intention to file for a patent for a load cell mounting assembly. Hill-Rom informed Stress-Tek that one or more Hill-Rom employees would appropriately be listed as co-inventors on any patent that included information that Stress-Tek had learned from Hill-Rom. September 24, 1999 Letter (Exhibit B hereto).

18. Stress-Tek admitted in its response of October 14, 1999 that Stress-Tek had seen a number of "mounting configurations," including, but not limited to, a ball stud inserted into a socket lined with a thin rubber sheeting and a hard plastic socket. Stress-Tek further announced

its intention to "limit the patent application to concepts developed by us." October 14, 1999 Letter (Exhibit C hereto).

19. On December 31, 2001, Stress-Tek suggested that it was entitled to \$1.5 million for its "proprietary design." December 31, 2001 Letter (Exhibit D hereto). On March 8, 2002, counsel for Hill-Rom asked Stress-Tek to present Hill-Rom with the basis for its assertion of rights in any improvements to the load cell assembly, and reminded Stress-Tek that Stress-Tek had seen Hill-Rom's confidential configurations and was obligated by its confidentiality agreement not to disclose anything it had learned or been given while conducting its testing for Hill-Rom. Hill-Rom also reminded Stress-Tek that, under the terms of the Agreement, any improvement made by Stress-Tek was Hill-Rom's confidential information, which Stress-Tek was also obligated not to disclose. March 8, 2002 Letter (Exhibit E hereto).

20. On April 11, 2002, Stress-Tek advised Hill-Rom of its grant of United States Patent No. 6,362,439 B1 ("the '439 patent") (attached as Exhibit F). The application for this patent was filed on April 21, 2000.

21. Review of that patent by Hill-Rom reveals that Stress-Tek has claimed Hill-Rom's load cell assembly configuration, including the use of a stud and a liner.

22. Stress-Tek informed Hill-Rom by letter of June 19, 2002, that it believes its '439 patent to be infringed by Hill-Rom's use of the load cell assembly on the Advanta™ bed. June 19, 2002 Letter (attached as Exhibit G). Hill-Rom has denied this infringement.

COUNT I - JOINT INVENTORSHIP

23. Hill-Rom incorporates paragraphs 1-22 above as though fully set forth herein.
24. Title 35 of the United States Code, Section 116, provides that inventors shall file a joint application for a patent in the event that an invention is made by two or more persons.

25. Title 35 of the United States Code, Section 256, provides for the correction of an error of omission of inventors by order of the court.

26. Some or all of the claims of the '439 patent are the invention of persons who were employed by or engaged by Hill-Rom at the time of their inventions. The inventions are owned by Hill-Rom.

27. Stress-Tek omitted these individuals from the application for the '439 patent.

28. Hill-Rom is entitled to a declaratory judgment that Hill-Rom employees are co-inventors of the subject matter claimed in the '439 patent, and that Hill-Rom is a co-owner or assignee of this and all patents as may issue from the application for the '439 patent.

29. Because Hill-Rom is the co-owner of the '439 patent, it cannot infringe that patent.

COUNT II - BREACH OF CONTRACT

30. Hill-Rom incorporates paragraphs 1-22 as though fully set forth herein.

31. Stress-Tek entered into a "Bilateral Confidential Information Agreement" with Hill-Rom dated March 3, 1998. By its terms, Stress-Tek was obligated to keep confidential those materials with which it was provided to conduct its testing and experimentation. Stress-Tek was also obligated to keep confidential any technical information developed for Hill-Rom.

32. The Agreement provides for any dispute to be litigated in the courts of Indiana, as the sole courts of competent jurisdiction.

33. Hill-Rom has complied with its obligations under the Agreement in all respects.

34. In Stress-Tek's application for the '439 patent, Stress-Tek used confidential information it received from Hill-Rom and technical information it developed for Hill-Rom.

35. Hill-Rom has been and continues to be harmed by Stress-Tek's breaches of this Agreement, and has been and continues to suffer irreparable injury, including but not limited to loss of goodwill.

COUNT III - Unjust Enrichment

36. Hill-Rom incorporates paragraphs 1-22 above as though fully set forth herein.

37. In enlisting the aid of Stress-Tek to test its load cell assembly, Hill-Rom disclosed to Stress-Tek confidential technical information related thereto, including but not limited to drawings of load cell assemblies and weighing bed frames.

38. The aforementioned technical information was of monetary and intellectual value to Hill-Rom.

39. This information was of value when used by Stress-Tek in its application for the '439 patent.

40. Hill-Rom should be awarded an amount proven at trial sufficient to compensate Hill-Rom for its actual damages and to deny Stress-Tek the benefit of its unjust enrichment. Furthermore, Hill-Rom is entitled to a permanent injunction enjoining Stress-Tek from any use or disclosure of Hill-Rom's proprietary or confidential technical information.

WHEREFORE, Hill-Rom prays that this Court:

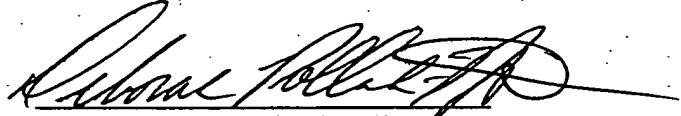
1. Declare that certain Hill-Rom employees are co-inventors of some or all of the inventions claimed in the '439 patent and any further patents as may issue from the application for the '439 patent;

2. Issue an order mandating that the '439 patent be amended to add certain Hill-Rom employees as inventors and reflect the ownership by Hill-Rom thereof, and that any other patents that may issue from the application for the '439 patent be likewise amended;

3. Issue an order pursuant to Count I declaring that Stress-Tek is estopped from asserting against Hill-Rom the '439 patent or any patents that may issue from the application for the '439 patent;
4. Grant to Hill-Rom a permanent injunction pursuant to Counts II & III to prevent Stress-Tek's disclosure of or use of technical or other confidential information obtained while retained by Hill-Rom and/or developed for Hill-Rom while retained by Hill-Rom;
5. Award actual damages in an amount to be proven at trial;
6. Award reasonable attorney's fees pursuant to 35 U.S.C. § 285;
7. Grant any and all relief found necessary and proper under the circumstances.

JURY DEMAND

Hill-Rom requests a trial by jury on its claims.



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Hill-Rom, Inc., and Hill-Rom Services, Inc.



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Robert

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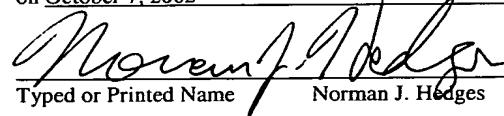
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Invention: LOAD CELL APPARATUS }
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Examiner: Gibson, R. }

Certificate Under 37 C.F.R. § 1.8(a)

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231

on October 7, 2002


Typed or Printed Name

Norman J. Hedges

Dated: October 7, 2002

1856
Commissioner for Patents
Washington, D.C. 20231

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Dear Sir:

Introduction

A first Official Action on the present application was mailed April 5, 2002. An Amendment and Reply Under 37 C.F.R. § 1.111 is filed herewith replying to the first Official Action. Thus, there is no outstanding reply due from the Applicant to an Official Action in the present application.

Petition Fee

A check to cover the \$130 petition fee under § 1.17(h) is provided herewith. The Commissioner is hereby authorized to charge any additional fees which may be required or credit any overpayment to our Deposit Account No. 10-0435.

Petition

The Applicant requests that action on the present application by the Office be delayed for a period of six (6) months.

Showing of Good and Sufficient Cause

The Applicant submits that suspension of action on the present application is necessary to permit the resolution of certain matters that the Examiner must review to determine the applicability of a rejection made in the first Official Action. In the first

Official Action, claims 1-11 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 17-28 of U.S. Patent No. 6,362,439 B1 to Reichow (hereinafter “Reichow”). The inventorship and ownership of Reichow are currently being challenged in a civil action. Based on the resolution of the inventorship and ownership of Reichow, a double patenting rejection based on Reichow may or may not be applicable to the present application. Because these matters are currently unresolved, the requested suspension if believed necessary.

“Before consideration can be given to the issue of double patenting, there must be some common relationship of inventorship and/or ownership of two or more patents or application.” MPEP 804. Reichow currently lists Keith Reichow as the sole inventor and Stress-Tek, Inc. as the sole assignee. The present application lists Donald L. Mobley, Steve A. Dixon, and Randall K. Hopkins as inventors. Hill-Rom Services, Inc. is the current assignee of the present application.

Currently, there is no recognized common relationship between the inventorship and/or ownership of Reichow and the present application. Thus, based on the currently recognized inventorship and ownership of Reichow and the present application, the present double patenting rejection is improper and should be withdrawn.

However, as detailed in the Amendment and Reply filed herewith, the inventorship and ownership of Reichow is currently being challenged in a complaint. This complaint may result in a conclusion that one or more of the inventors listed in the present application should also be listed as inventors of Reichow, which may ultimately result in the assignee of the present application having an ownership interest in Reichow.

The Applicant submits that during the requested suspension, the questions of inventorship and ownership of Reichow may be resolved. With this resolution, the applicability of a double patenting rejection based on Reichow may be determined. Thus, the Applicant submits that good and sufficient reasons supporting the necessity of suspension of action of the present application has been provided. Furthermore, because of the potentially lengthy time frame for resolving the inventorship and ownership of Reichow, the six (6) months requested for the suspension is also believed to be reasonable.

Conclusion

The Applicant submits that the requirements for granting the requested suspension have been met. In the event that there are any questions related to this request or to the application in general, the undersigned would appreciate the opportunity to address

those questions directly in a telephone interview to expedite the prosecution of this application for all concerned.

Respectfully submitted,

BOSE MCKINNEY & EVANS LLP

By:


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